

Federal Court



Cour fédérale

Date: 20170125

Docket: IMM-2873-16

Citation: 2017 FC 92

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, January 25, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

GUY-THEOPHILE KIPRE

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] against the decision rendered by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada on June 14, 2016, under subsection 111(1) of the IRPA to dismiss the applicant's appeal and to affirm the decision

by the Refugee Protection Division [RPD] on August 14, 2015, according to which the applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the IRPA.

II. Facts

[2] The applicant, age 33, is a citizen of Côte d'Ivoire. He has a spouse, a 12-year-old daughter, and a six-year-old son in Côte d'Ivoire. He arrived in Canada with a dance troupe on May 28, 2015, and claimed refugee protection a few days later.

[3] According to his account, the applicant is allegedly affiliated with the opposition party, the Front populaire ivoirien [FPI] [Ivorian Popular Front], and in 2010 and 2011, he reportedly worked as an activist to increase awareness among youth in his neighbourhood. With the ascent to power of the Rassemblement des républicains [RDR] [Rally of the Republicans] party, FPI activists were the target of persecution by the Forces républicaines de Côte d'Ivoire [FRCI] [Republican Forces of Côte d'Ivoire]. The applicant reportedly went into hiding in Ghana from April to September 2011 and returned to Côte d'Ivoire once the political situation had settled.

[4] With the approach of the presidential elections in Côte d'Ivoire in October 2015, violence committed by the forces of the party in power (RDR) against opposition party activists (FPI) resumed. The applicant alleges that he began to fear for his life in March 2015 and contacted a smuggler in order to flee Côte d'Ivoire. On May 10, 2015, while he was away from home, the FRCI allegedly arrived at his residence and, after not finding him, ransacked the premises.

[5] The applicant reportedly hid at a friend's residence in another neighbourhood of the city until the smuggler organized his departure for Canada on May 28, 2015. In the meantime, on May 15, 2015, the FRCI reportedly went to his residence a second time, again looking for him, and, after not finding him, allegedly mistreated members of his family. The applicant apparently did not hear about that incident until around June 20, 2015, after filing his Basis of Claim [BOC] Form.

III. Decision

A. *The RPD's decision on August 14, 2015*

[6] On August 14, 2015, the RPD denied the applicant's refugee claim, finding him not to be credible. The panel criticized the numerous omissions and contradictions in the account in the BOC and the applicant's testimony. He alleges that he began taking steps with a smuggler on March 5, 2015, to leave Côte d'Ivoire when, in a Canadian visa application, he presented an invitation letter dated March 2, 2015, to participate in a festival being held in Québec. In addition, the RPD considered the description of the events on May 10 and 15, 2015, not to be credible, considering that the applicant had no knowledge of them and that the documents submitted were not reliable. The complaint from the applicant's spouse bears the curious date of June 31, 2015, and is inconsistent with the submitted medical certificate regarding the duration of her temporary inability to work. The RPD also notes that the applicant is identified as a student on his FPI membership card, while he finished his studies in 2006; as a result, it did not give the card any probative value. Lastly, the applicant reported to a Canada Border Services Agency officer that he did not know the other members of the dance troupe with whom he

travelled to Canada, but he was in close contact with them on social media. In addition, since the evidence showed that the applicant openly displayed his activities on social media, the RPD found that the applicant's behaviour was not compatible with that of a refugee claimant who is afraid for his life. Moreover, the RPD rejected the evidence that came from the Ivorian press, considering that previous articles from the same source regarding the applicant had been fabricated in order to facilitate him obtaining a visa. Similarly, the RPD rejected the documents the applicant submitted, considering the ease of obtaining falsified documents.

[7] In the alternative, the RPD found that there was no prospective risk for the applicant if he were to return to Côte d'Ivoire, considering his limited political profile and the lack of evidence of political persecution against FPI activists simply because of their membership in the party.

B. *The RAD's decision on June, 14, 2016*

[8] On June 14, 2016, the RAD dismissed the applicant's appeal and affirmed the RPD's decision, according to which the applicant is neither a Convention refugee under section 96 of the IRPA nor a person in need of protection under section 97 of the IRPA.

[9] Under subsection 110(4) of the IRPA, the RAD refused to admit certain documents that the applicant submitted as new evidence. In this instance, a newspaper article detailing circumstances and a situation that differed from those of the applicant was rejected. Other documents—press clippings—were admitted but did not prove to be sufficient to justify holding a hearing before the RAD under subsection 110(6) of the IRPA.

[10] After reviewing the RPD's decision, listening to the recording of the hearing, and analyzing all evidence on record, the RAD affirmed the RPD's findings as to the applicant's lack of credibility. Firstly, the RAD found that there is a contradiction in the applicant's testimony as to when he first entered into contact with the smuggler and that his explanations are not reasonable. Secondly, given the omissions, contradictions and implausibilities regarding the two incidents that allegedly occurred on May 10 and 15, 2015, the RAD found that it was reasonable for the RPD to have given no probative value to the elements surrounding this part of the applicant's account. Lastly, the RAD found that the RPD's examination of the Ivorian press articles and documents submitted by the applicant to obtain a Canadian visa was reasonable, considering how easy it is to fabricate false news and false documents. However, the RAD found that the RPD had made a non-determinative error by giving no probative value to the applicant's FPI membership card.

[11] After reviewing the documentary evidence and the evidence that was available before the RPD, the RAD found that the applicant had failed to establish that he would personally be subjected to a danger of torture, to a risk to his life or to a risk of cruel treatment if he were to return to Côte d'Ivoire. As a result, the RAD upheld the RPD's decision.

IV. Submissions of the parties

A. *Submissions of the applicant*

[12] The applicant also criticizes the RAD for erring by not admitting certain new pieces of evidence, rejecting newspaper articles that showed that opposition party activists were being

violently repressed by the party in power. According to the applicant, although the situations depicted are different from what he experienced, these articles nevertheless show the violence experienced by FPI activists, who are persecuted regardless of their profile or position in the party.

[13] The applicant claims that the RAD's decision to affirm the RPD's findings as to his credibility is unreasonable. According to him, the RAD erred by finding that the RPD's error of giving no probative value to his FPI membership card was not determinative. His involvement in the FPI is apparently critical in explaining his fear and his decision to leave the country. Furthermore, the RAD allegedly did not give enough weight to the applicant's explanations regarding both the dates of contact with the smuggler and his steps to obtain a visa and the deficiencies regarding the events that allegedly occurred in May 2015. Lastly, it apparently found that the facts reported by the newspaper *Le Bélier* were false news, with no evidence.

[14] With regard to the prospective risk encountered, the applicant criticizes the RAD for its findings that were contrary to the objective documentation on Côte d'Ivoire. He argues that PRI activists, including him, are personally targeted and persecuted by the Ivorian forces linked to the party in power.

B. *Submissions of the respondent*

[15] The respondent alleges that the RAD correctly decided not to admit certain documents as new evidence because they were irrelevant, according to the criteria set out in *Raza v. Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]. In addition, the new evidence admitted by

the RAD did not warrant holding a hearing, since it was insufficient to show that the applicant would be exposed to a personal risk if he were to return to Côte d'Ivoire and that it was therefore unlikely to justify granting his refugee claim.

[16] The respondent submits that it was open to the RAD to reject the applicant's unsatisfactory explanations as to the start of his contact with the smuggler and the events that allegedly occurred in May 2015, given the contradictions in his testimony. It was also reasonable for the RAD to doubt the authenticity of the articles from *Le Bélier* and to give them no probative value. Although, unlike the RPD, the RAD found that probative value could be given to the applicant's FPI membership card, the RAD was justified in finding that this error was not determinative.

[17] The respondent argues that after reviewing the objective documentary evidence, it was reasonable for the RAD to decide that the applicant did not have the profile of the people and circumstances portrayed in the evidence and that he was not personally at risk in Côte d'Ivoire.

V. Issues

[18] The issues in this case are as follows:

- 1) Did the RAD err in fact and in law by refusing certain new pieces of evidence?
- 2) Did the RAD err in fact in its assessment of the applicant's credibility?
- 3) Did the RAD err in fact and in law by finding that there was no prospective risk for the applicant?

[19] The RAD's interpretation of the IRPA provisions regarding the admissibility of new evidence is subject to the reasonableness standard of review (*Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 96 [*Singh*]).

[20] The assessment of the applicant's credibility by the specialized tribunals is subject to the reasonableness standard and commands a certain level of deference from the Court (*Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 [*Mugesera*]).

[21] The RAD's findings regarding the absence of a prospective risk are also subject to the reasonableness standard.

VI. Relevant provisions

[22] Subsection 110(4) of the IRPA provides that:

Evidence that may be presented

110 (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

Éléments de preuve admissibles

110 (4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

VII. Analysis

[23] The application for judicial review is dismissed for the following reasons.

A. *Did the RAD err in fact and in law by refusing certain new pieces of evidence?*

[24] The Act stipulates that an applicant can submit new evidence according to certain criteria, one of them being relevance (*Singh and Raza*, above). However, in this case, the RAD determined that the articles from *Ivoirebusiness* did not depict circumstances that were similar to those experienced by the applicant and were not relevant. Therefore, it was reasonable for the RAD to exclude them.

B. *Did the RAD err in fact in its assessment of the applicant's credibility?*

[25] Our Court has reiterated many times the duty to show deference to specialized tribunals that are able to assess the credibility of refugee claimants directly (*Mugesera*, above).

[26] The Court finds that it was reasonable for the RAD to conclude that the applicant lacked credibility. It affirmed the RPD's decision, which also made adverse findings based on the contradictions and omissions in the applicant's testimony. The omissions, contradictions and inconsistencies identified by the RAD warranted the stated findings. The RAD conducted a careful and complete analysis and clearly justified its reasoning. The RAD's decision is an acceptable and rational solution that falls within the range of possible outcomes (*Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9).

C. *Did the RAD err in fact and in law by finding that there was no prospective risk for the applicant?*

[27] The Court cannot agree to the applicant's arguments as to the prospective risk encountered. Although the documentary evidence reports acts of violence committed against FPI activists, it was reasonable for the RAD to find that the applicant was not personally at risk in Côte d'Ivoire, considering that, according to the evidence, his profile does not match that of the circumstances or the persecuted persons. The applicant did not present sufficient arguments to warrant this Court's intervention.

VIII. Conclusion

[28] The application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
This 4th day of October 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

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